



Michigan Supreme Court

State Court Administrative Office

Trial Court Services Division

Michigan Hall of Justice

P.O. Box 30048

Lansing, Michigan 48909

Phone (517) 373-4835

MEMORANDUM

DATE: January 5, 2006

TO: District and Municipal Court Judges
cc: Court Administrators, Clerks of Court

FROM: Sandi Hartnell

RE: Changes to MCR 6.004(C) Applicable to Misdemeanor Cases

A recent change to the Rules of Criminal Procedure is specifically applicable to misdemeanor cases.

The former version of MCR 6.004(C) required that a defendant be released on personal recognizance when the defendant had been incarcerated for 180 days or more for a felony case, or 28 days or more for a misdemeanor case. Effective January 1, 2006, the rule was amended to allow for an exception to the mandatory release provision if the court finds by clear and convincing evidence that the defendant is likely either to fail to appear for future proceedings or to present a danger to any other person or the community.

The amendments to MCR 6.004 did not alter the periods of delay the court must exclude when computing the 28-day and 180-day periods. Excluded periods of delay include:

- (1) periods of delay resulting from other proceedings concerning the defendant, including but not limited to competency and criminal responsibility proceedings, pretrial motions, interlocutory appeals, and the trial of other charges,
- (2) the period of delay during which the defendant is not competent to stand trial,
- (3) the period of delay resulting from an adjournment requested or consented to by the defendant's lawyer,
- (4) the period of delay resulting from an adjournment requested by the prosecutor, but only if the prosecutor demonstrates on the record either

(a) the unavailability, despite the exercise of due diligence, of material evidence that the prosecutor has reasonable cause to believe will be available at a later date; or

(b) exceptional circumstances justifying the need for more time to prepare the state's case,

(5) a reasonable period of delay when the defendant is joined for trial with a codefendant as to whom the time for trial has not run, but only if good cause exists for not granting the defendant a severance so as to enable trial within the time limits applicable, and

(6) any other periods of delay that in the court's judgment are justified by good cause, but not including delay caused by docket congestion.

Questions may be directed to me at 517-373-0122, or to Dawn Childress at 517-373-3756.